

## What is Land Drainage?

Land drainage is the disposal of rainwater, achieved by a network of watercourses of various types. The law on land drainage is not very clear and many people are unaware of its existence.

## Main river or ordinary watercourse?

Major watercourses and rivers such as the River Chelmer or Heybridge Creek are designated "main rivers". These are under the control of the Environment Agency and the Agency is the relevant Operating Authority. Environmental Health at Maldon District Council can advise you which are the main rivers in Maldon District, but all enquiries relating to the operation of main rivers should be referred to the [Environment Agency](#).

Almost all other watercourses, including streams, ditches (whether dry or not), ponds, culverts, drains, pipes and any other passage through which water may flow, are defined as "ordinary watercourses." In the case of ordinary watercourses, the District Council is the Operating Authority.

Exceptions are:

- 1) "Public surface water sewers" which are the responsibility of the sewerage undertaker, [Anglian Water](#).
- 2) "Highway drains" which drain public highways only and are maintained by the [Highways Authority at Essex County Council](#).

## Who owns the watercourse?

The owner of land or property adjacent to a watercourse is known in legal terms as the "riparian owner" of the watercourse. Often the watercourse will form the boundary between two properties and the deeds may indicate a single owner. If not both adjacent owners have equal responsibilities as riparian owners. The special case of [roadside ditches](#) is dealt with here in another FAQ. owns the watercourse?

## What are the responsibilities of a riparian owner?

The Land Drainage Act 1991 requires that a watercourse be maintained by its owner in such a condition that the free flow of water is not impeded. The riparian owner must accept the natural flow from upstream but need not carry out work to cater for increased flows resulting from some types of works carried out upstream, for example a new housing development.

## How is the operation of the land drainage network maintained?

There are a number of pieces of legislation designed to ensure that the land drainage network operates satisfactorily.

1) If a riparian owner fails to carry out his/her responsibilities under the Land Drainage Act, or if anyone else causes a watercourse to become blocked or obstructed, the County and District Councils have powers of enforcement by serving a notice under section 28 of the Act. If this is ignored, the Council concerned may carry out the necessary work itself and then recharge the person responsible for the full cost incurred. The District Council normally implements these powers but the County Council will deal with problems that affect the highway. The person responsible may also be prosecuted for nuisance under the Public Health Act 1936.

2) Anyone wishing to carry out work in, over or adjacent to an ordinary watercourse must apply for consent from the Maldon District Council and/or the Environment Agency, so that the proposals can be assessed for their effect on the drainage network and the environment. Please contact our planning department and the Environment Agency for advice on your particular development.

## **What consents are required for such work?**

If you wish to place or construct anything, such as a dam, weir, headwall or culvert, which may affect the flow in a watercourse, you must obtain the written consent of the Environment Agency.

In addition, should you wish to pipe, bridge or cover an ordinary watercourse, you must submit details of your proposals and obtain consent in writing from the Environment Agency. These consents are in addition to any planning or building regulation approvals you may need.

The current policy of the Environment Agency is to resist the piping of ditches in order to retain wildlife habitats. The consideration of an application will also take into account the fact that, while a pipe may allow the flow of water, it is not able to provide the storage capacity of an open ditch in times of heavy rain and may be more difficult to maintain.

## **What other legislation applies to ordinary watercourses?**

**Discharge** - Certain discharges to watercourses require the consent of the Environment Agency, which will be able to advise you on this subject. These discharges include outfalls from septic tanks and private sewerage treatment plants.

**Pollution** - If you feel a watercourse may be polluted you should contact the Environment Agency or the District Council's Environmental Health team

**Planning** - If you propose to discharge surface water from a new building or development into an existing watercourse you may be required to make improvements downstream (to enable the watercourse to deal with any increased flow) or to provide storage to control the rate of flow from the site.

**Environment Agency By-laws** - The Environment Agency may have additional by-laws that affect ordinary watercourses. Please contact them for further information on this.

## **Roadside Ditches**

The riparian owner of any ditches alongside roads is normally the adjoining landowner, as the highway boundary invariably lies along the top of the bank closest to the road. Thus, although the road may drain into the ditch, the landowner is responsible for maintaining it.

However, if the County Council, the highway authority, have piped the ditch under their highway powers, they become responsible for its maintenance. Likewise, any pipe beneath the highway is the responsibility of the County Council. When the condition of a ditch is causing flooding on a highway it will be the County Council that takes action under the Land Drainage Act.

## **What if the legislation does not cover my problem?**

You can apply for assistance of Agricultural Land Tribunals to settle disputes where regulators are not able to get involved. For more information click [here](#).

Also please see the [Environment Agency website](#).